

Exhibit A

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION**

**JAKE SHAW, Individually and On
Behalf of All Others Similarly Situated,**

Plaintiff,

v.

PERATON, INC.

Defendant.

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Civil Action No. 7:21-cv-45

PLAINTIFF'S SUR-REPLY

Plaintiff Jake Shaw ("Plaintiff") on behalf of himself and all others similarly situated ("Class Members") files Sur-Reply in order to address arguments contained in Defendants' Reply.

In their Reply to Plaintiff's Response to Defendant's Motion to Dismiss, Defendant claims that Plaintiffs have not exhausted the requirement to mediate this matter. Dkt. 16, p. 3. In reality, Plaintiffs' counsel asked counsel for Defendant on a number of occasions if Defendant would be interested in mediating this case. Exh. A to Plaintiff's Sur Reply. Counsel for Plaintiff did not couch this offer in terms of either formal mediation or informal mediation. *Id.* Defendant replied that they had no interest in formal mediation. Exh. B to Plaintiff's Sur Reply.

Moreover, while Defendant claims that Plaintiffs are well within their statute of limitations, Defendant neglects to inform this Court that under Fifth Circuit precedent, even the filing of a claim for arbitration does not toll limitations. That is because, under *Fonseca v. USG Ins. Servs.*, 467 Fed. Appx. 260 (5th Cir. 2012), "a demand for arbitration does not toll the statute of limitation." 467 Fed. Appx. at 261, quoting *U.S. ex rel. Portland Constr. Co. v. Weiss Pollution Control Corp.*, 532 F.2d 1009, 1013 (5th Cir. 1976). In other words, if Plaintiff is forced straight

to arbitration without this Court staying the case, Plaintiff has no way to toll his statute of limitations.

Respectfully Submitted,

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By: /s/ Douglas B. Welmaker

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ATTORNEY FOR PLAINTIFF

Certificate of Service

I hereby certify that the foregoing Sur Reply has been electronically served on all counsel of record via Notice of Electronic Filing on a known Filing User through the CM/ECF system on April 7, 2021.

/s/ Douglas B. Welmaker

Douglas B. Welmaker